

OPENING

Law Enforcement Newsletter

LINES



A Publication of the Maricopa County Attorney's Office

Volume 3, Number 3

DECEMBER 1999

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Off the Cuff...

Rules of Criminal Procedure Concerning Dissemination of Discovery

By Paul Ahler, *Chief Deputy*

Since the institution of the Maricopa County Attorney's Plea Cut Off Policy in 1997, our Office has seen a dramatic reduction in attorney case loads. Cases are being processed at a much faster pace. This clearly benefits everyone in law enforcement.

If the Plea Cut Off Policy is to remain effective, it is critical that the County Attorney's Office be in compliance with the Rules of Criminal Procedure concerning dissemination of discovery. There have been some instances where the County Attorney's Office has been unable to provide discovery within ten (10) days of Arraignment as required by Rules 15 of the Arizona Rules of Criminal Procedure, due to not having received all police reports. The defense bar has cited failure to provide timely disclosure as a violation of due process. We need to receive police reports in a timely manner in order to comply with the Rules of Criminal Procedure. Please complete departmental reports and supplemental reports in a timely manner. If you have any questions concerning this issue, please feel free to contact Jerry Landau or Mark Faull at (602) 506-5781. ⚖️

Jerry's Journal

By Jerry Landau

Special Assistant County Attorney

In a continuing effort to enhance our law enforcement partnerships County Attorney Richard Romley had expanded the Maricopa County Attorney's Office's resources dedicated to working with law enforcement agencies. Mark Faull, newly hired Deputy County Attorney, has been assigned to assist with law enforcement liaison functions.

Mark brings over 19 years of professional criminal justice, law enforcement and legislative experience to the Maricopa County Attorney's Office. He began his career as a patrol officer with Tucson Police Department in 1980, taking a leave of absence to begin law school in 1984. After graduation from the University of Arizona college of Law in 1987, Mark clerked for Judge John M. Roll on the Arizona Court of Appeals. He has served as a Deputy Pima County Attorney, Senior Attorney with the American Prosecutor's Research Institute at the National District Attorney's Association, Chief Deputy Prosecuting Attorney in Missouri and Senior Police Administrator in Illinois. Mark's background includes law enforcement training and legislative development at the local, state and national levels. We welcome Mark to the law enforcement team.

After completing MCAO training and a brief stint in the Pre-trial Division, Mark will begin full-time law enforcement liaison and legislative duties. Mark's office is located at 301 W. Jefferson on the eighth floor. He can be reached at (602) 506-5781 or paged at (602) 201-4129. ⚖️

Aggravated Domestic Violence

The effective date of the new aggravated domestic violence statute was January 1, 1999. ARS 13-3601.02 classifies a third domestic violence offense committed within the last 60 months (5 years) as a Class 5 Felony. Priors on the record before January 1, 1999 cannot be used for the enhancement.

The Maricopa County Attorney's Office will review all potential Aggravated domestic violence cases under the existing issuing standard of "a reasonable likelihood of conviction". We have not restricted the threshold domestic violence offense type (type of prior or type of new offense) for issuing appropriate felony charges. We encourage you to do a complete criminal history check through your records or MDT/dispatch. If two priors are found, officers must submit them for felony prosecution in the same manner as an aggravated DUI.

For cases where the priors are not found prior to booking and the Initial Appearance, the Maricopa County

Attorney's Office has contacted all the city prosecutors and asked that they refer eligible cases back to the arresting law enforcement agency for presentation to the county attorney's office on the felony charge. When submitting a case to our office, do not forget to include documentation of the prior convictions.

Because of our commitment to Victim's Rights we cannot give you a verbal charging decision on a case. Each case must be formally presented so that the victim may exercise the right to discuss county attorney office decisions with the assigned prosecutor.

If you have questions about the policy or have a case you would like to have reviewed, you may contact Karen O'Conner, Family Violence Bureau Supervisor (602-506-6161) or Terry Jennings, Major Crimes Bureau Supervisor at SEF (602-506-2141). ☎

Form IV

You may recall from previous newsletters that a new Form IV, or release questionnaire, has been promulgated by the Supreme Court. Please complete the Form IV so that the magistrate has as much information as possible to make a decision on release conditions. The law requires the magistrate find probable cause as a prerequisite to holding a suspect in custody. The new Form IV provides a section to include the probable cause statement. In addition, if the arrestee is a fugitive from justice, a copy of the warrant/NCIC printout should be attached to the Form IV and the officer should note this fact prominently in the body of the probable cause statement. Follow this procedure even when there are new charges with the warrant. Form IV info is especially critical when dealing with undocumented aliens/foreign nationals who may or may not be FOJ's. If they are released to INS they may have more lenient conditions of release, contact the victim or abscond from the serious state charges. ☎

Drug Field Testing

Remember, the Maricopa County Attorney's Office is now accepting field test results for making charging decisions in submittals on possession of marijuana, cocaine and methamphetamine. This will expedite both the charging and preliminary hearing process and help relieve the backlog for overburdened crime labs. All agencies are urged to contact Ed Trujillo at the DPS crime lab for training.

NOTE: if the case is set for trial a lab report will be requested. ☎

Misdemeanor offenses committed by juveniles

A.R.S. § 8-323 authorizes the Presiding Juvenile Judge to appoint magistrates and justices of the peace to hear cases involving juveniles for a limited number of offenses. If it is the policy of your agency to utilize the Arizona Traffic Ticket and Complaint Form to cite a juvenile into city or justice court, please remember this does not include felonies. You can only cite for the misdemeanor offense

listed below and, of course you cannot cite for a felony.

The statute authorizes this process for the following misdemeanor offenses committed by juveniles (Note: your department policy may be more restrictive than the statute):

1. Any provision of Title 28 not declared to be a felony;
2. Purchase, possession or consumption of spirituous liquor by a juvenile;
3. Boating or game and fish violations;
4. Curfew;
5. Truancy;
6. Damage or disfigurement of property by graffiti, or the purchase or possession of materials with the intent to use the materials for graffiti;
7. The purchase or possession of tobacco;
8. Any ordinance violations of the city, town or political subdivision; and
9. Interference with judicial proceedings involving disobeying or resisting the lawful order, process or other mandate of the juvenile hearing officer or failure to appear related to any offense from the above list of offenses. ☎

S.A.N.E. Program up and running

By Cindi Nannetti, Bureau Chief of the Sex Crimes Bureau

Maricopa County Attorney Richard M. Romley is pleased to announce the startup of the Sexual Assault Nurse Examiner's (S.A.N.E) program on Oct. 4, 1999.

Nurse Examiners have conducted sexual assault exams in the United States since 1974. Kim Yedowitz, R.N. of Scottsdale Health Care and the coordinator for the SANE and prosecutors in the Maricopa County Attorney's Office Sex Crimes Bureau have invested many hours in putting together a program for Maricopa County.

The designated nurse examiners were carefully selected and are very committed to the success of this new program. They have received more than 100 hours of classroom and practical training and will operate under very strict guidelines formulated, in part, by the U.S. Department of Justice.

Nurse examiners will conduct sexual assault examination of victims who are at least 18 years or older. The examinations will be conducted at four separate facilities within Maricopa County.

To access a Sexual Assault Nurse Examiner, a sex crimes detective or sergeant from the investigating agency must call the Scottsdale Health Care main operator at (602) 675-4000 and ask for a S.A.N.E. examiner. Within five minutes, a nurse will return the call and make arrangements to respond to one of the five locations selected by the investigating agency to conduct

the sexual assault exam. S.A.N.E. guarantees that a nurse will respond within one hour. There will be two nurses on call 24 hours a day, seven days a week.

S.A.N.E. offers victim-oriented service and will make arrangements for an advocate to report to the exam location. The nurse examiner will obtain initial information from the investigating officer or detective and after the exam will discuss any findings with that person and provide copies of any reports. The officer or detective then is asked to fill out a brief quality assurance survey. Finally, the nurse examiner will be available at no additional cost for later consultation about the case with the investigating agency or the assigned prosecutor.

It is important to note that the investigating agency may select any of the five facilities for the exam. All of the facilities offer interview rooms with audio/video-taping equipment. The various police agencies are willing to coordinate use of the facilities.

The Maricopa County Attorney's Office and S.A.N.E. are committed to offering the high level of care and expertise currently provided during child sexual and physical abuse exams. All participants in the inter-agency endeavor are committed to providing quality service to sexual assault victims.

If you have any questions please call me at (602) 506-7787. ☎

Helpful Hints

By Mark Faull, Deputy County Attorney

"Hey Sarge, what would ya call this anyway?"

From time to time officers are called to investigate crimes they don't encounter on a regular basis. While the investigative techniques are probably already in your "tool box," it is a good idea to fall back on your basic training, haul out the statute book and look at the actual elements of the offense.

For example to prove bigamy a prosecutor must establish that the

acts were committed "knowingly" and must beat the defenses listed in the statute. In order to prove cruelty to animals, the mind set of the offender and knowledge of animal care is critical. Yes, we have had a bigamy submittal.

Even if you have not seen the offense since your final exam at the academy just ask the questions and document the circumstantial evidence that will establish the mind set (culpable mental state) and the behavior (acts or omissions) that make up the offense.

That gives the County Attorney's Office the ammunition to make a good charging decision and obtain the best outcome.

Aggravated DUI charging

When requesting Aggravated DUI charges please include all applicable violations, such as Under the influence (A.R.S. § 28-1381 A.1) BAC .10 or above (28-1381 A.2) or Drug or metabolite in the system (28-1381 A.3) on the submittal form. ☎

Strong cases rely on proper evidence collection

Fingerprints, fibers, blood and DNA are powerful pieces of evidence used to convict many defendants “beyond a reasonable doubt.” These same pieces of evidence may also lose cases if defense attorneys successfully convince a jury that evidence has been improperly handled by the police.

A recent article printed in the Arizona Journal written by Mike Sweedo, an independent consultant, instructs defense attorneys “to understand the dynamics of evidence-handling by the police so they can better defend their clients accused of crimes.” According to Sweedo, more cases are being tried where the seized evidence has not been properly packaged, transported, stored and analyzed. Independent crime scene experts, he claims, can find inconsistencies and identify items that were not processed but should have been.

Defense crime scene experts scrutinize:

- ◆ Items collected as “found property.”
- ◆ Items processed for fingerprints
- ◆ Items processed and then released
- ◆ Potential evidence that was not processed.
- ◆ Whether the police wore gloves when collecting the evidence.
- ◆ Whether the evidence was packaged and logged properly.
- ◆ Evidence in the photographs that was not logged.

A common defense technique is to prove that evidence pointing to their client was “selected and processed with an intent to “get” the person and without concern for others who might have been involved.

As frustrating as witnessing a defendant released on a mere technicality is for both officers and prosecutors, it is not uncommon for a jury to want written statements, crime scene photographs and taped conversations, nothing short of a video tape of the crime. A recent court disposition explains what juries expect, “Jurors found the defendant not guilty of armed robbery because no one could ID (the defendant) but the officer and because they wanted to have a video, audio or written confession in addition to the verbal confession made to the officer. The jury informed [the attorney] that they had no doubt that the defendant had committed the crime, but they didn’t think there was enough evidence.”

Evidence is crucial to any case. Proper handling and documentation of the crime scene will build strong cases and eliminate acquittals based on phantom doubts raised by the defense. ⚖️



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